

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-vs-

ROBERT C. MORGAN, et. al.,

21-CR-32-EAW-HKS

Defendants.

**DEFENDANT MICHAEL TREMITI'S MEMORANDUM IN OPPOSITION
TO THE GOVERNMENT'S MOTION FOR ENTRY OF A PROTECTIVE ORDER**

Defendant Michael Tremiti files this memorandum in opposition to the Government's motion for a protective order for the reasons set forth below:

1. As noted by defendant Todd Morgan, the definition of "protected information" in the Government's draft protective order is overly broad, because it includes the phrase "tax return information governed by 26 U.S.C. § 6103."

2. This definition of "protected information" prevents the defense from filing – or making other use of – anything that makes reference to information found in tax returns produced by the Government.

3. "Return information" in 26 U.S.C. § 6103(b)(2), incorporated into the Government's definition of "protected information" in the draft protective order, includes:

a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments

4. Therefore, the inclusion of this statutory definition within the meaning of the "protected information" governed by the protective order covers all information derived from a tax return. This restriction severely limits not only the filing of such information, but its use at all stages of the litigation, including in any court proceeding (*See, e.g.*, Dkt. 24-1).

5. The Government has offered no legitimate justification why the definition in § 6103(b)(2) should be included in the protective order and as argued by defendant Todd Morgan, the restrictions imposed in the draft protection order only flow one way – the Government is not limited in its use of the information described, as the defense would be.

6. As defendant Todd Morgan noted, “Even if § 6103 applied to the way in which the Government received tax returns in this case – namely, from the IRS – subsection 6103(i)(4) specifically permits the disclosure of tax information in a federal criminal case if the material must be disclosed pursuant to Rule 16 of the Federal Rules of Criminal Procedure.”

7. Defendant Michael Tremiti therefore objects to the Government’s definition of “protected information” in the draft protective order.

Dated: April 8, 2021
Rochester, NY

[s/Donald M. Thompson](#)
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